IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5122 of 1998
To
FIRST APPEAL No. 5140 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
JAGJIVAN VIRJI - Defendant(s)

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Appearance :
MS HANSA PUNANI, AGP for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 13/09/2006

ORAL COMMON JUDGMENT :

1. Since this group of First Appeals arises from common judgment

delivered by the Assistant Judge, Morbi dated 15th September, 1995, in Land Reference Case No. 279 of 1987 and its allied Land Reference Cases, they are heard together and now they are being disposed of by this common judgment.

2. The State of Gujarat has preferred these appeals under section 54 of the Land Acquisition Act [hereinafter referred to as 'the Act'] to challenge the judgment and awards made in Reference Case No. 279 of 1987 and its allied cases. The respondents in all these appeals are the original applicants/claimants before the Ld. Assistant Judge. Their agricultural lands which are situated at village Chakampar of Morbi Taluka were required for implementation of Ghoda Dhroy Irrigation Scheme. For that purpose proceedings under the provisions of the Act were initiated. Notification under section 4 of the Act was published in the Government Gazette on 2nd July, 1981; whereas declaration under section of the Act was published in the Government Gazette on 29th April, 1982. Thereafter, on completion of other requisite formalities, the Land Acquisition Officer declared the award on 7th March, 1983. He determined compensation at the rate of Rs.60/- per RA for Jirayat land and Rs.90/- per RA for Bagayat land. Since the respondents were dissatisfied with the award, they preferred applications under section 18 of the Act to the Collector with request to make reference to the District Court for enhancement of the compensation. The applications were granted and the aforesaid reference cases were filed in the Court of the Ld. Assistant Judge at Morbi.

3. Before the Reference Court, the respondents claimed compensation at the rate of Rs.300/- per RA for Jirayat land and Rs.400/- per RA for Bagayat land. These cases were contested by the present appellant by filing written statement a Exh. 8. It was contended therein that the award made by the Land Acquisition Officer was just and proper.

4. At the hearing, the respondents led oral as well as documentary evidence. Original applicant Narshibhai Khimjibhai examined himself at Exh. 13 and also examined one witness Durlabhji Bhikhabhai Patel at Exh. 22. They also produced sale instances at Exhs. 14 to 20. So far the present appellant is concerned, it examined Maganbhai Velabhai at Exh. 27 and Madhubhai Rudabhai at Exh. 31. It also produced one document at Exh. 32. The appellant also produced one sale instance at Exh. 21. The respondents contended that considering the sale instances and also the quality of land, they ought to have been awarded compensation at the rate of Rs.300/- per RA for Jirayat land and Rs.400/- per RA for Bagayat land. They also claimed compensation for the embankments created in the fields, the trees and other structures created on the lands. As against that, the appellant contended that the award made by the Land Acquisition Officer was just and proper considering the circumstances on record.

4.1. The Ld. Judge, while determining the rate of compensation, took into consideration various sale instances, the indexes produced by the respondents and ultimately arrived at a conclusion that so far the Jirayat land was concerned, the appropriate rate would be Rs.280/- per RA and for Bagayat land it would be Rs.400/- per RA. The Court also took into consideration the structures, trees, etc., standing on the lands and awarded compensation which has been stated in detail in the tabular form in the judgment itself.

5. The State has approached this Court to make grievance that the rate fixed by the Reference Court was on a higher side and it called for interference by this Court. Ms. Hansa Punani, Ld. AGP appearing for the appellant has submitted that the Ld. Judge has not properly appreciated the evidence led by the parties, oral as well as documentary. She has further submitted that considering the documentary evidence produced by the State, the rate of compensation determined by the Court is on a higher side. The

respondents are served, but no-one appears on their behalf.

6. I have perused the record and proceedings of the case. I have also carefully gone through the evidence as well as judgment of the Reference Court. It is not in dispute that the lands which were acquired were agricultural lands and of the type of Jirayat and Bagayat. It appears from the judgment that except survey no. 161/1 all the other lands were of Jirayat type. The Ld. Judge has taken into consideration the sale instances in respect of the land situated at village Chakampar, which are produced by the respondents and also the oral evidence of Maganbhai Velabhai, and has come to the conclusion that the rate of compensation fixed by the Land Acquisition Officer was hopelessly inadequate. The Ld. Judge, therefore, determined the rate at Rs.280/- per RA for Jirayat land and Rs.400/- per RA for Bagayat land. Witness Narshibhai Khimjibhai, who is examined at Exh. 13 by the respondents, has stated that he owns agricultural land at village Chakampar. He had seen the lands of other respondents. According to him, the rate of compensation determined by the Land Acquisition Officer was inadequate. He has stated that in the year 1981 the rate of Jirayat land was Rs.300/- per RA and for Bagayat land Rs.400/- per RA. He has also stated that in the sale instances the correct price is not reflected because the parties always show less price than the actual price at which the dealing has taken place. He has also placed the various indexes on record, which are produced at Exh. 14 to 20. He has stated that there is a well situated in the field of Mohanbhai Amarshi, for which no compensation has been awarded. In the cross-examination, he has stated that whether there were embankments created in the fields of the respondents, he was not aware. He was also not in a position to say how-many trees were there and what was the expenditure made for construction of the embankments. He has stated that in the field of Mohanbhai Narshibhai there was a well, which was half constructed, but he stated that he was not aware of the expenditure incurred for it by Mohanbhai.

6.1. The respondents examined Durlabhji Bhikhabhai Patel at Exh. 22. His evidence shows that he owns agricultural land at village Chakampar. He has supported the version of witness Narshibhai stating that the sale-deeds do not reflect the correct price at which the transaction has taken place. In the cross-examination nothing of any substance has been brought out.

6.2. Witness Maganbhai Velabhai has been examined by the present appellant at Exh. 27. He has stated that he had purchased the land bearing survey no. 102 admeasuring acres 4-08 guntha on 24th March, 1981 from Mohan Dala and Tribhovan Dala. In the sale-deed the price was shown at Rs.10,000/-. However, in the examination-in-chief he has denied that in the sale-deed the same price was shown at which the transaction took place. He has also denied that in the year 1981 the market price of the land was Rs.2,500/- per acre. In the cross-examination he has stated that he had paid Rs.50,000/- for the land which he had purchased, but in the sale document the price is shown as Rs.10,000/-. He has also stated that after the year 1981 there was 15 to 20% rise in the prices of the land at Chakampar.

6.3. The next witness examined by appellant – State was Madhubhai Rudabhai Chavda at Exh. 31. He was, at the relevant time, working as Junior Clerk in the Land Acquisition Section in the office of the Deputy Collector. In the examination-in-chief he has stated that on visiting the site under acquisition, no structures, trees, pipeline, etc., were found. He has denied that the price of the land at Chakampar was Rs.300/- per RA for Jirayat land and Rs.400/- per RA for Bagayat land. In the cross-examination he has stated that he had not seen the indexes issued by the Government. He has also stated that he had not seen the lands which were under acquisition. He has also admitted that he did not have any personal knowledge at what rate the actual transaction of the lands at Chakampar took place. He has stated that villages Chakampar,

Rapar, Aniyari, etc., are in the vicinity of each other and the compensation is paid at the same rate for the lands situated in these villages. He has, however, stated that he would not be in a position to say whether the lands of all these villages are considered to be of the same quality.

7. So far the documentary evidence is concerned. Exh. 26 has been extensively relied on by the Ld. Judge, The Ld. Judge has also taken into consideration the other sale instances in respect of the lands of Rapar, Aniyari, Metpar, which are produced at Exhs. 14 to 20. All these sale instances reflected the prices ranging between Rs.101/- per RA to Rs.500/- per RA. The Ld. Judge has, therefore, determined the rate of Jirayat land at Rs.280/- per RA. In my view, the rate is properly fixed and it is not required to be disturbed. The oral evidence of the aforesaid witnesses does not throw much light on this aspect, but the indexes as well as the sale instances produced by them do render considerable assistance in properly determining the rate. However, the Ld. Judge has thereafter determined the rate of Bagayat land and it is only on the basis that when rate of Jirayat land is fixed at Rs.280/- per RA, the Bagayat land being of better quality, higher rate should be fixed for it and, therefore, the Ld. Judge has fixed Rs.400/- per RA. This is the claim made by the respondents also in the Reference Court. However, the logic applied by the Ld. Judge is not proper. It clearly appears that even according to the respondents, the difference between the rates of Jirayat as well as Bagayat is only of Rs.100/-. The Ld. Judge has made it Rs.120/-. Apart from that, the oral evidence as well as sale instances referred to above, would clearly show that so far the Bagayat land is concerned, the rate could not be more than Rs.350/- per RA. To that extent the Ld. Judge has committed error, which is required to be corrected. Hence, the rate fixed for Bagayat land is required to be modified and reduced from Rs.400/- to Rs.350/- per RA. As stated above, the judgment shows that only in respect of survey no. 161/1 i.e., subject matter of Reference Case No. 295/1987 the finding is given regarding Bagayat land, hence this

modification will apply to the land forming subject matter of Reference Case No. 295/1987. The other directions of the Ld. Judge will remain the same.

In the result, the First Appeals No. 5122 to 5137 of 1998 and First Appeals No. 5139 & 5140 of 1998 are dismissed. First Appeal No. 5138 of 1998 is partly allowed. No order as to costs.

R & P to be retransmitted to the trial Court forthwith.

[Akshay H Mehta, J.]

* Pansala.